



# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill may require an increased number of individuals to register as sexual predators or sexual offenders.

Promote personal responsibility: Offenders who have been convicted of certain criminal offenses will be required to register as a sexual predator or sexual offender.

### B. EFFECT OF PROPOSED CHANGES:

#### SEXUAL PREDATOR/SEXUAL OFFENDER

##### Present Situation

*Sexual Predator Registration:* Section 775.21, F.S. provides that a person convicted of an enumerated sexual offense must be designated a "sexual predator." Specifically, a person must be designated a sexual predator if he or she has been convicted of:

1. A capital, life, or first-degree felony violation, or any attempt thereof, of one of the following offenses:
  - a. kidnapping or false imprisonment<sup>1</sup> where the victim is a minor and the defendant is not the victim's parent;
  - b. sexual battery;<sup>2</sup>
  - c. lewd or lascivious offenses;<sup>3</sup>
  - d. selling or buying a minors for child pornography;<sup>4</sup> or
  - e. a violation of a similar law of another jurisdiction;
2. Any felony violation of one of the following offenses where the offender has previously been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication one of the following offenses:
  - a. kidnapping, false imprisonment or luring or enticing a child<sup>5</sup> where the victim is a minor and the defendant is not the victim's parent,
  - b. sexual battery;<sup>6</sup>
  - c. procuring a person under the age of 18 for prostitution<sup>7</sup>
  - d. lewd or lascivious offenses;
  - e. lewd or lascivious battery on an elderly person;<sup>8</sup>
  - f. promoting sexual performance by a child;<sup>9</sup>
  - g. selling or buying a minors for child pornography; or
  - h. a violation of a similar law of another jurisdiction;<sup>10</sup>

If the sexual predator is in the custody or control of, or under the supervision of, the Department of Corrections (DOC), or is in the custody of a private correctional facility, the predator must register with

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<sup>1</sup> s. 787.01, F.S. or s. 787.02, F.S.,

<sup>2</sup> See chapter 794, F.S.

<sup>3</sup> s. 800.04, F.S.

<sup>4</sup> s. 847.0145, F.S.

<sup>5</sup> s. 787.025, F.S.

<sup>6</sup> Excluded are offenses contained in ss. 794.011(10) and 794.0235, F.S.

<sup>7</sup> s. 796.03, F.S.

<sup>8</sup> s. 825.1025(2)(b), F.S.

<sup>9</sup> s. 827.071, F.S.

<sup>10</sup> Additionally, a person must be designated as a sexual predator if he or she committed one of the offenses listed in a. through h. above and has previously been convicted of the offense of selling or showing obscenity to a minor or using a computer to solicit sexual conduct of or with a minor [ss. 847.0133 or 847.0135, F.S.]

the DOC and provide specified information. Private correctional facilities are also governed by these requirements.

If the sexual predator is not in the custody or control of, or under the supervision of, the DOC, or is not in the custody of a private correctional facility, and the predator establishes or maintains a residence in this state, the predator must initially register in person at an FDLE office, or at the sheriff's office in the county of residence within 48 hours after establishing permanent or temporary residence.

Within 48 hours of initial registration, a sexual predator who is not incarcerated and who resides in the community, including a predator under DOC supervision, must register at a driver's license office of the Department of Highway Safety and Motor Vehicles (DHSMV) and present proof of registration, provide specified information, and secure a driver's license, if qualified, or an identification card. Each time a sexual predator's driver's license or identification card is subject to renewal, and within 48 hours after any change in the predator's residence or name, he or she must report in person to a driver's license facility of the DHSMV and is subject to specified registration requirements.

Registration procedures are also provided for sexual predators who are under federal supervision, in the custody of a local jail, designated as a sexual predator (or another sexual offender designation) in another state and establish or maintain a residence in this state, or are enrolled, employed, or carrying on a vocation at an institution of higher education in this state.

Extensive procedures are provided for notifying communities about certain information relating to sexual predators, much of which is compiled during the registration process. The law directs how information collected by the DOC, the DHSMV, and others, is to be provided to FDLE. Extensive procedures are also provided for verification of sexual predator's addresses. See ss. 775.21, 943.043, 943.0435, 944.606, and 944.607, F.S.

A sexual predator's failure to comply with registration requirements is a third degree felony. s. 775.21, F.S. A sexual predator who has been convicted of one a list of enumerated offenses when the victim of the offense was a minor is prohibited from working or volunteering at any business, school, day care center, park, playground, or other place where children regularly congregate. A violation of this provision is a third degree felony.<sup>11</sup>

*Sexual offender.* According to s. 943.0435, F.S., a "sexual offender" is a person who has been convicted of a specified sexual offense and who has been released on or after October 1, 1997 from the sanction imposed for any conviction of a specified offense. A sexual offender is required to report and register in a manner similar to the registration of a sexual predator under s. 775.21, F.S. There are also somewhat similar registration requirements for sexual offenders under the custody or control of the DOC, or under its supervision, or in custody of a private correctional facility. s. 944.607, F.S. Failure of a sexual offender (under s. 943.0435, F.S., or s. 944.607, F.S.) to comply with the registration requirements is a third degree felony.

### **Effect of Proposed Changes**

HB 847 CS amends the definition of "institution of higher education" to include career centers. As a result, a sexual predator or sexual offender who is enrolled, employed or carrying on a vocation at a career center will be required to provide to FDLE the name, address and county of the institution as well as additional information and will be required to report change in enrollment or employment status to the sheriff or Department of Corrections as appropriate. The sheriff will be required to notify the career center of the sexual predator's presence and any change in enrollment or employment status. The change to the definition of institution of higher education is intended to ensure compliance with the federal Campus Sex Crimes Prevention Act.<sup>12</sup>

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<sup>11</sup> S. 775.21(10)(b), F.S.

<sup>12</sup> Codified at 42 U.S.C. 14071(j)

HB 847 CS adds to the list of offenses that qualify a person for sexual offender or sexual predator registration the offense of sexual misconduct by a Department of Juvenile Justice program employee (or an employee of a program operated by a provider under a contract with the department) with a juvenile offender.<sup>13</sup> CS/HB 847 also adds the offense of selling or buying of a minor into sex trafficking or prostitution.<sup>14</sup> As such, a person who commits one of these offenses and has a previous conviction for this offense, or another qualifying offense, must be designated a sexual predator. A person who has been convicted of this offense (and has no other prior qualifying offense) will be considered a sexual offender. CS/HB 847 also adds these offenses to the list of offenses which preclude a sexual predator from working or volunteering at a place where children regularly congregate.

HB 847 CS revises the operational date used for career offender registration from January 1, 2003 to July 1, 2002.

#### C. SECTION DIRECTORY:

Section 1. Amends s. 775.21, F.S., relating to Florida Sexual Predators Act to add qualifying offenses.

Section 2. Amends s. 775.261, F.S., relating to Florida Career Offender Registration Act.

Section 3. Amends s. 943.0435, F.S, relating to sexual offender registration to modify definitions and add qualifying offenses.

Section 4. Amends s. 944.606, relating to sexual offender notification upon release.

Section 5. Amends s. 944.607, F.S. relating to sexual offender registration to add qualifying offenses.

Section 6. Provides effective date of July 1, 2005.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

HB 847 CS will require a person who has been convicted of sexual misconduct by an employee of the Department of Juvenile Justice to register as a sexual predator or a sexual offender. FDLE has indicated that the changes made by the bill to the sexual offender and sexual predator laws will have a minor impact on the functions of their respective registries. The department states that “[m]odifications and updates will be made to electronic and print training and educational materials and forms. Updates will disburse to local law enforcement, other criminal justice partners and registrants advising of modification to these laws.”

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

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<sup>13</sup> s. 985.4045(1), F.S.

<sup>14</sup> s. 796.035, F.S.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

HB 847 CS may have a fiscal impact on a person who is required by the bill to register as a sexual predator or sexual offender.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The Committee on Criminal Justice adopted a strike-all amendment which added the offense of buying or selling of a minor into sex trafficking or prostitution to the list of qualifying offenses under the sexual predator and sexual offender statutes. The amendment also required a sexual predator or sexual offender who vacates a permanent residence and fails to establish or maintain another permanent or temporary residence to report to law enforcement within 6 days. The amendment also made other technical changes.

On April 12, 2005, the Community College and Workforce Committee adopted 3 amendments to the bill:

- Restores current statutory language regarding the time requirements for offenders to register when establishing a residence.
- Removes the definition of "career offender" which has already been defined in s. 775.261(2)(a), F.S.
- Restores current statutory language regarding the time requirements for offenders to register when establishing a residence.